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 LOZA & LOZA, LLP, JULIO LOZA
 and CHRISTINA S. LOZA

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT
 OF CALIFORNIA – SOUTHERN DIVISION

MOPHIE, INC., formerly known as
 mSTATION Corporation, a California
 Corporation, and DANIEL HUANG,
 an individual,

Plaintiffs,

vs.

LOZA & LOZA, LLP, a California
 Limited Liability Partnership, JULIO
 LOZA, an individual, and CHRISTINE
 S. LOZA, an individual,

Defendants.

CASE NO. 8:11-cv-00539-DOC-
 (MLGx)

**DEFENDANTS LOZA & LOZA,
 LLP, JULIO LOZA AND
 CHRISTINA S. LOZA'S ANSWER
 TO PLAINTIFFS' COMPLAINT**

DEMAND FOR JURY TRIAL

Defendants Loza & Loza, LLP, Julio Loza and Christina S. Loza
 (collectively "Defendants") hereby answer the Complaint ("Complaint") filed by
 Plaintiffs Mophie, Inc., and Daniel Huang (collectively "Plaintiffs") as follows:

INTRODUCTION

1. Answering Paragraph 1, Defendants deny the allegations
 contained therein.

2. Answering Paragraph 2, Defendants deny the allegations
 contained therein.

JURISDICTION AND VENUE

3. Answering Paragraph 3, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis deny each and every allegation contained therein.

4. Answering Paragraph 4, Defendants admit the allegations contained therein.

PARTIES

5. Answering Paragraph 5, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis deny each and every allegation contained therein.

6. Answering Paragraph 6, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein, and on that basis deny each and every allegation contained therein.

7. Answering Paragraph 7, Defendants admit the allegations contained therein.

8. Answering Paragraph 8, Defendants admit the allegations contained therein.

9. Answering Paragraph 9, Defendants admit the allegations contained therein.

10. Answering Paragraph 10, Defendants deny the allegations contained therein.

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MOPHIE RETAINED LOZA & LOZA, LLP TO SAFEGUARD ITS
INTELLECTUAL PROPERTY PORTFOLIO

11. Answering Paragraph 11, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 11, and on that basis deny each and every allegation contained therein.

12. Answering Paragraph 12, Defendants admit that plaintiff Daniel Huang is the CEO of plaintiff Mophie. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 12 and on that basis deny each and every remaining allegation contained therein.

13. Answering Paragraph 13, Defendants admit that defendant Julio Loza met plaintiff Huang while defendant Julio Loza was at the law firm of Sheldon & Mak and that defendant Julio Loza is a registered patent attorney. Defendants also admit that the quoted language in Paragraph 13 appears on Loza & Loza, LLP's website. Defendants deny the remaining allegations in Paragraph 13.

14. Answering Paragraph 14, Defendants admit that Defendants Loza & Loza, LLP and Julio Loza were retained by Plaintiff Mophie to represent it with respect to some of its intellectual property interests. Defendants deny the remaining allegations in Paragraph 14.

15. Answering Paragraph 15, Defendants admit that Defendant Julio Loza introduced Christina Loza to Plaintiffs and represented her to be an intellectual property specialist, and that the quoted language in Paragraph 15 appears on Loza & Loza, LLP's website. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 15, and on that basis deny each and every remaining allegation contained therein.

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1 16. Answering Paragraph 16, Defendants deny the allegations
2 contained therein.

3 17. Answering Paragraph 17, Defendants admit that Defendants
4 did not provide either Mophie or Mr. Huang with a written retainer or fee
5 agreement. Defendants deny the remaining allegations in Paragraph 17.

6 18. Answering Paragraph 18, Defendants admit that the quoted
7 language in Paragraph 18 appears on Loza & Loza, LLP's website. Defendants
8 deny the remaining allegations in Paragraph 18.

9 19. Answering Paragraph 19, Defendants admit that Plaintiff
10 Mophie retained Defendants to advise it concerning some of its intellectual
11 property rights. Defendants deny the remaining allegations in Paragraph 19.

12 20. Answering Paragraph 20, Defendants admit that in Spring,
13 2010, Plaintiff Mophie advised Defendants of several of its competitors' products
14 that Plaintiff Mophie suggested potentially infringed upon some of its patents or
15 patent applications. Defendants deny that Plaintiffs emphasized to Defendants
16 that they sought to be conservative and cautious in asserting allegations of
17 infringement in order to avoid excessively aggressive responses. Defendants are
18 without sufficient knowledge or information to form a belief as to the truth of the
19 remaining allegations in Paragraph 20, and on that basis deny each and every
20 remaining allegation contained therein.

21 21. Answering Paragraph 21, Defendants admit that Defendant
22 Christina Loza advised Plaintiff Mophie that certain letters be sent to some
23 companies which were marketing the allegedly infringing products. Defendants
24 deny the remaining allegations in Paragraph 21.

25 22. Answering Paragraph 22, Defendants deny the allegations
26 contained therein.

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1 23. Answering Paragraph 23, Defendants admit that Defendants
2 proceeded with enforcement efforts that were based on Design Patents.
3 Defendants deny the remaining allegations in Paragraph 23.

4 24. Answering Paragraph 24, Defendants deny the allegations
5 contained therein.

6 25. Answering Paragraph 25, Defendants admit that Defendant
7 Christina Loza sent the May 6, 2010, June 3, 2010 and June 8, 2010 letters on
8 behalf of mStation, Inc. and the June 16, 2010 letter on behalf of mStation
9 Corporation. Defendants deny the remaining allegations in Paragraph 25.

10 26. Answering Paragraph 26, Defendants admit that the "cease and
11 desist" letters claimed that the competitive product infringed on the Design
12 Patents, and threatened legal action against the recipient. Defendants deny the
13 remaining allegations in Paragraph 26.

14 27. Answering Paragraph 27, Defendants deny the allegations
15 contained therein.

16 28. Answering Paragraph 28, Defendants admit that the *Case-*
17 *Mate* Action was filed in U.S.D.C. for the Northern District of Georgia, Atlanta
18 Division on June 17, 2010. Defendants deny the remaining allegations in
19 Paragraph 28.

20 29. Answering Paragraph 29, Defendants admit that Defendants
21 filed a complaint styled "Daniel Huang v. GC Technology, LLC d/b/a Phonesuit,
22 Hali-Power Inc. and Case-Ari, LLC d/b/a Case-Mate, 2:10-cv-04705-CAS-VBK"
23 in the U.S.D.C. for the Central District of California. Defendants are without
24 sufficient knowledge or information to form a belief as to the truth of the
25 allegation that Plaintiffs incurred substantial legal fees in connection with that
26 action in an amount not less than \$50,000, and on that basis deny this allegation.
27 Defendants deny the remaining allegations in Paragraph 29.

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1 30. Answering Paragraph 30, Defendants admit that Hali-Power,
 2 Inc. filed a lawsuit styled *Hali-Power, Inc. v. Mophie, Inc.*, 1:10-cv-00773-GLS-
 3 RFT in the U.S.D.C. for the Northern District of New York, Albany Division.
 4 Defendants deny that the complaint therein was served on Defendants.
 5 Defendants are without sufficient knowledge or information to form a belief as to
 6 the truth of the remaining allegations in Paragraph 30 and on that basis deny each
 7 and every remaining allegation contained therein.

8 31. Answering Paragraph 31, Defendants are without sufficient
 9 knowledge or information to form a belief as to the truth of the allegations in
 10 Paragraph 31 and on that basis deny each and every allegation contained therein.

11 32. Answering Paragraph 32, Defendants are without sufficient
 12 knowledge or information to form a belief as to the truth of the allegations in
 13 Paragraph 32 and on that basis deny each and every allegation contained therein.

14 33. Answering Paragraph 33, Defendants are without sufficient
 15 knowledge or information to form a belief as to the truth of the allegations in
 16 Paragraph 33 and on that basis deny each and every allegation contained therein.

17 34. Answering Paragraph 34, Defendants deny the allegations
 18 contained therein.

19 35. Answering Paragraph 35, Defendants admit that the quoted
 20 language in Paragraph 35 appears on Loza & Loza, LLP's website.

21 36. Answering Paragraph 36, Defendants admit that Defendants
 22 represented Plaintiff in connection with efforts to procure patents for some of its
 23 inventions and designs. Defendants deny the remaining allegations in
 24 Paragraph 36.

25 37. Answering Paragraph 37, Defendants deny that they filed the
 26 897 Patent Application on January 8, 2008 but admit that they filed it on January
 27 18, 2008. Defendants admit the remaining allegations in Paragraph 37.

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1 38. Answering Paragraph 38, Defendants deny the allegations
2 contained therein.

3 39. Answering Paragraph 39, Defendants deny the allegations
4 contained therein.

5 40. Answering Paragraph 40, Defendants admit the allegations
6 contained therein.

7 41. Answering Paragraph 41, Defendants admit that Defendants
8 did not prepare written transfer agreements for the patents from Mr. Huang to
9 Mophie. Defendants deny the remaining allegations contained Paragraph 41 of
10 the Complaint.

11 42. Answering Paragraph 42, Defendants deny the allegations
12 contained therein.

13 43. Answering Paragraph 43, Defendants deny the allegations
14 contained therein.

15 44. Answering Paragraph 44, Defendants admit that Defendants
16 never prepared written transfer agreements between the Plaintiffs. Defendants
17 deny the remaining allegations in Paragraph 44.

18 45. Answering Paragraph 45, Defendants deny the allegations
19 contained therein.

20 46. Answering Paragraph 46, Defendants deny the allegations
21 contained therein.

22 47. Answering Paragraph 47, Defendants deny the allegations
23 contained therein.

24 48. Answering Paragraph 48, Defendants deny the allegations
25 contained therein.

26 49. Answering Paragraph 49, Defendants deny the allegations
27 contained therein.

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1 50. Answering Paragraph 50, Defendants deny the allegations
2 contained therein.

3 51. Answering Paragraph 51, Defendants deny the allegations
4 contained therein.

5 52. Answering Paragraph 52, Defendants admit that the quoted
6 language in Paragraph 52 appears on Loza & Loza, LLP's website. Defendants
7 deny the remaining allegations in Paragraph 52.

8 53. Answering Paragraph 53, Defendants admit that Defendants
9 represented Plaintiff Mophie in connection with matters relating to its intellectual
10 property portfolio, including applying for patents, trademarks and copyrights.
11 Defendants deny the remaining allegations in Paragraph 53.

12 54. Answering Paragraph 54, Defendants admit that Mophie
13 retained Defendants to handle the procurement of appropriate trademarks for the
14 business and some of its products. Defendants are without sufficient knowledge
15 or information to form a belief as to the remaining allegations in Paragraph 54
16 and on that basis deny all remaining allegations contained therein.

17 55. Answering Paragraph 55, Defendants admit that on or about
18 November 11, 2007, Christina Loza filed an application on behalf of Plaintiff
19 Mophie to register the trademark "Juice Pack" for use with, among other things,
20 batteries and battery packs. Defendants deny the remaining allegations in
21 Paragraph 55.

22 56. Answering Paragraph 56, Defendants deny the allegations
23 contained therein.

24 57. Answering Paragraph 57, Defendants deny the allegations
25 contained therein.

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1 58. Answering Paragraph 58, Defendants admit that through a
2 PTO Office Action dated March 31, 2008, the PTO refused registration for the
3 "Juice Pack" mark and that according to the PTO, the "Juice Pack" application
4 was rejected because of a likelihood of confusion with previously registered
5 trademarks and design marks which contained the term "Juice." Defendants deny
6 the remaining allegations in Paragraph 58.

7 59. Answering Paragraph 59, Defendants admit that Defendants
8 filed a response to the PTO Office Action, which asserted various legal
9 arguments. Defendants deny the remaining allegations in Paragraph 59.

10 60. Answering Paragraph 60, Defendants admit that on or about
11 February 13, 2009, the trademark application for "Juice Pack" was abandoned
12 because a response to the Office Action mailed on July 18, 2008 was not received
13 within the 6-month response period. Defendants deny the remaining allegations
14 in Paragraph 60.

15 61. Answering Paragraph 61, Defendants deny the allegations
16 contained therein.

17 62. Answering Paragraph 62, Defendants are without sufficient
18 knowledge or information to form a belief as to the truth of the allegations in
19 Paragraph 62 and on that basis deny each and every allegation contained therein.

20 63. Answering Paragraph 63, Defendants are without sufficient
21 knowledge or information to form a belief as to the truth of the allegations in
22 Paragraph 63 and on that basis deny each and every allegation contained therein.

23 64. Answering Paragraph 64, Defendants deny the allegations
24 contained therein.

25 65. Answering Paragraph 65, Defendants admit that after Plaintiff
26 Mophie's termination of Defendants, Defendant Loza &Loza, LLP was required
27 to release to Plaintiff Mophie, upon its request, the client papers and property in
28 its possession in accordance with Rule 3-700(D) of the California Rules of

Professional Conduct. Defendants deny the remaining allegations in Paragraph 65.

66. Answering Paragraph 66, Defendants admit that upon Plaintiff Mophie's termination of Defendant Loza & Loza, LLP's representation of it, Mophie requested that Defendant Loza & Loza, LLP transfer to it the files it maintained with respect to Mophie's legal matters. Defendants deny the remaining allegations in Paragraph 66.

67. Answering Paragraph 67, Defendants deny the allegations contained therein.

68. Answering Paragraph 68, Defendants are without sufficient knowledge or information to form a belief as to the truth that the estimated cost of an audit of Mophie's intellectual property portfolio is \$32,000. Defendants deny the remaining allegations in Paragraph 68.

**FIRST CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)**

69. Defendants incorporate by reference Defendants' responses to Paragraph 1 through 68 of the Complaint as though set forth in full.

70. Answering Paragraph 70, Defendants admit the allegations contained therein.

71. Answering Paragraph 71, Defendants admit the allegations contained therein.

72. Answering Paragraph 72, Defendants admit the allegations contained therein.

73. Answering Paragraph 73, Defendants admit the allegations contained therein.

74. Answering Paragraph 74, Defendants deny the allegations contained therein.

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1 75. Answering Paragraph 75, Defendants deny the allegations
2 contained therein.

3 76. Answering Paragraph 76, Defendants deny the allegations
4 contained therein.

5 77. Answering Paragraph 77, Defendants deny the allegations
6 contained therein.

7 78. Answering Paragraph 78, Defendants deny the allegations
8 contained therein.

9 **SECOND CAUSE OF ACTION**
10 **(LEGAL MALPRACTICE - TRADEMARK**
11 **AND PATENT APPLICATION ISSUES)**

12 79. Defendants incorporate by reference Defendants' responses to
13 Paragraph 1 through 78 of the Complaint as though set forth in full.

14 80. Answering Paragraph 80, Defendants admit the allegations
15 contained therein.

16 81. Answering Paragraph 81, Defendants deny the allegations
17 contained therein.

18 82. Answering Paragraph 82, Defendants deny the allegations
19 contained therein.

20 83. Answering Paragraph 83, Defendants deny the allegations
21 contained therein.

22 84. Answering Paragraph 84, Defendants deny the allegations
23 contained therein.

24 85. Answering Paragraph 85, Defendants deny the allegations
25 contained therein.

26 86. Answering Paragraph 86, Defendants deny the allegations
27 contained therein.

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1 87. Answering Paragraph 87, Defendants deny the allegations
2 contained therein.

3 88. Answering Paragraph 88, Defendants deny the allegations
4 contained therein.

5 89. Answering Paragraph 89, Defendants deny the allegations
6 contained therein.

7 90. Answering Paragraph 90, Defendants deny the allegations
8 contained therein.

9 **THIRD CAUSE OF ACTION**
10 **(LEGAL MALPRACTICE – “CEASE AND DESIST” LETTERS AND**
11 **RESULTING LITIGATIONS)**

12 91. Defendants incorporate by reference Defendants’ responses to
13 Paragraph 1 through 90 of the Complaint as though set forth in full.

14 92. Answering Paragraph 92, Defendants deny the allegations
15 contained therein.

16 93. Answering Paragraph 93, Defendants deny the allegations
17 contained therein.

18 94. Answering Paragraph 94, Defendants deny the allegations
19 contained therein.

20 95. Answering Paragraph 95, Defendants deny the allegations
21 contained therein.

22 96. Answering Paragraph 96, Defendants deny the allegations
23 contained therein.

24 97. Answering Paragraph 97, Defendants deny the allegations
25 contained therein.

26 98. Answering Paragraph 98, Defendants deny the allegations
27 contained therein.

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1 99. Answering Paragraph 99, Defendants deny the allegations
2 contained therein.

3 100. Answering Paragraph 100, Defendants deny the allegations
4 contained therein.

5 101. Answering Paragraph 101, Defendants deny the allegations
6 contained therein.

7 **FIRST AFFIRMATIVE DEFENSE**

8 The Complaint and each cause of action therein are barred by the
9 statute of limitations embodied in C.C.P. §340.6.

10 **SECOND AFFIRMATIVE DEFENSE**

11 Plaintiffs are estopped from asserting this Complaint or any cause of
12 action therein because of their own or their agents' acts, omissions and conduct
13 upon which Defendants relied to their prejudice and detriment.

14 **THIRD AFFIRMATIVE DEFENSE**

15 Plaintiffs have voluntarily waived their right to maintain the
16 Complaint or any cause of action therein by their own acts, omissions and
17 conduct.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 To the extent that Plaintiffs are entitled to any recovery on any of
20 their causes of action (a proposition Defendants dispute), their recovery should be
21 reduced by the failure, negligence or fault of third parties and Plaintiffs which
22 proximately caused or contributed to the damages alleged in the Complaint. The
23 conduct of all persons and parties must thus be compared to determine their
24 respective percentage of fault or responsibility.

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 Plaintiffs were under a duty to mitigate their damages and failed to
3 exercise reasonable care and diligence to avoid or minimize the injuries or
4 damages they allege. Consequently, Defendants are exonerated from any liability
5 to Plaintiffs for any damages caused by their failure to mitigate their damages.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 If, in fact, Plaintiffs sustained any injury or damage of any nature
8 whatsoever by reason of anything to be done or omitted to be done by Defendants
9 (which supposition is not admitted but is merely stated for the purpose of this
10 defense), such injury or damage, if any, was proximately caused or contributed to
11 by the negligence of Plaintiffs in failing to take proper and reasonable measures
12 to protect their own interests.

13 **SEVENTH AFFIRMATIVE DEFENSE**

14 Plaintiffs are barred from asserting the Complaint and any cause of
15 action therein by the doctrine of unclean hands.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 The Complaint and each cause of action therein are barred by the
18 doctrine of laches.

19 **PRAYER FOR RELIEF**

20 Wherefore, Defendants pray as follows:

- 21 1. That Plaintiffs take nothing by the Complaint and that
22 judgment be entered in favor of Defendants;
23 2. That Defendants be awarded their costs of suit and reasonable
24 attorney's fees to the extent that they are recoverable;
25 3. For such other and further relief as the court deems just and
26 proper.

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DEMAND FOR JURY TRIAL

Defendants hereby demand a trial by jury in this action.

DATED: August 8, 2011

LINDAHL BECK LLP

By: 

George M. Lindahl

Attorneys for Defendants

LOZA & LOZA, LLP, JULIO LOZA, AND
CHRISTINA S. LOZA